

PETER J. SALMON (SBN 174386)
MICHELLE A. MIERZWA (SBN 196175)
THOMAS N. ABBOTT (SBN 245568)
PITE DUNCAN, LLP
525 E. Main Street
P.O. Box 12289
El Cajon, CA 92022-2289
Telephone: (619) 590-1300
Facsimile: (619) 590-1385
E-Mail: tabbott@piteduncan.com

Attorneys for Defendant AURORA LOAN SERVICES, LLC

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARIA R. METCALF,

Plaintiff,

v.

DREXEL LENDING GROUP, a California
corporation, OLD REPUBLIC TITLE
COMPANY, a California corporation,
AURORA LOAN SERVICES LLC, a
California limited liability company
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., a
Delaware corporation, and ROEBRT E. WEISS
INCORPORATION, a California Corporation,

Defendants.

Case No. 3:08-cv-00731-W-POR

**NOTICE OF MOTION AND MOTION
TO DISMISS FOR FAILURE TO
SERVE DEFENDANT, FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED AND
ALTERNATIVELY FOR A MORE
DEFINITE STATEMENT (F.R.C.P.
12(b)(4), 12(b)(5), 12(b)(6), and 12(e))**

Date: June 23, 2008

Time: 10:30 a.m.

Courtroom: 7

**NO ORAL ARGUMENT WILL BE HEARD
[CivLR 7.1(d)1]**

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **June 23, 2008 at 10:30 a.m.**, or as soon thereafter as the matter may be heard in the above-entitled court, located at 940 Front Street, San Diego, California 92101-8900, defendant AURORA LOAN SERVICES, LLC will move the court to dismiss the action pursuant to Federal Rule of Civil Procedure 12(b)(6) because plaintiff's complaint fails to state a claim upon which relief can be granted, on the grounds that: each cause of action set forth in the complaint is barred by the applicable statute of limitation. In the alternative, defendant will move the court to order plaintiff to make a more definite statement pursuant to Federal Rule of Civil

1 Procedure 12(e).

2 The motion will be based on this Notice of Motion and Motion, the Memorandum of Points
3 and Authorities filed herewith, and the pleadings and papers filed herein.

4

5 Dated: May 14, 2008

PITE DUNCAN, LLP

6

7

By: /s/ Thomas N. Abbott

8

THOMAS N. ABBOTT

Attorneys for Defendant AURORA LOAN
SERVICES, LLC

9

E-mail: tabbott@piteduncan.com

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Peter J. Salmon (SBN 174386) Michelle A. Mierzwa (SBN 196175) Thomas N. Abbott (SBN 245568) PITE DUNCAN, LLP 525 E. Main Street P. O. Box 12289 El Cajon, CA 92022-2289 ATTORNEY FOR: (Name) Defendant AURORA LOAN SERVICES, LLC	TELEPHONE NO. (619) 590-1300	FOR COURT USE ONLY
U. S. DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA STREET ADDRESS: 940 Front Street MAILING ADDRESS: CITY & ZIP CODE: San Diego, California 92101-8900 BRANCH: Edward J. Schwartz U.S. Courthouse		
PLAINTIFF: MARIA R. METCALF DEFENDANT: DREXEL LENDING GROUP, et al.		
DECLARATION OF SERVICE [CCP 1013, 2015.5 and 1011] [CRC 2003 and 2006(d)]		CASE NUMBER: CV07-08149 RGK(JCRx)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 1820 E. First Street, Suite 420, Santa Ana, California 92705. On May 14, 2008, I served the following document(s) or true copies thereof, with all exhibits, described as: **NOTICE OF MOTION AND MOTION TO DISMISS FOR FAILURE TO SERVE DEFENDANT, FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND ALTERNATIVELY FOR A MORE DEFINITE STATEMENT (F.R.C.P. 12(b)(4), 12(b)(5), 12(b)(6), and 12(e))**, on the interested parties in this action as follows:

SEE COURT'S SERVICE LIST AS OF THE DATE OF THIS DECLARATION

[APPLICABLE PARAGRAPH(S) CHECKED:]

- X BY ELECTRONIC TRANSFER: I caused the above-entitled document(s) to be electronically filed and served on the interested parties via CM/ECF e-service at <http://www.casd.uscourts.gov/> on May 14, 2008. A copy transmission receipt will be maintained with the original document(s) in our office.
- BY MAIL: I caused such envelope with first-class postage fully prepaid thereon to be placed in the United States mail at Santa Ana, California.
- BY MAIL IN THE ORDINARY COURSE OF BUSINESS: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U. S. Postal Service on that same day with first-class postage thereon fully prepaid at Santa Ana, CA, in the ordinary course of business.
- I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY PERSONAL SERVICE: I caused the foregoing document to be personally served by hand to the offices of the addressee.
- BY FACSIMILE TRANSMISSION: I caused the foregoing document to be sent via facsimile transmission to the facsimile number(s) listed with each party.
- STATE: I certify/declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- X FEDERAL: I certify/declare/state under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed: May 14, 2008


 Barbara J. Finley